

# 11.3 Grievance Procedure

## 11.3.1 Purpose and Scope

- A. This procedure is intended to provide a means for faculty to seek redress regarding employment-related concerns. Subject to the limitations set forth in 11.3.1 B, faculty members may file a grievance under this procedure for any action, inaction, or decision by a Mines employee that has a tangible adverse professional impact on the faculty member.
- B. This grievance process cannot be used to review:
  - 1. Matters covered by the Board of Trustees or other institutional policies and procedures, including other Faculty Handbook or Academic Affairs procedures that contain specific avenues of appeal. For clarity, performance evaluations cannot be grieved under this Section 11.3.
  - 2. A decision or action by the Board of Trustees.
  - 3. Any matter pertaining to broad areas of the fiscal management, staffing or structure of the university, scheduling, Mines policies, procedures, and practices of a general nature. Examples of such items include the annual budget, operating procedures and protocols, Human Resourced programs or procedures, and organizational structure.
  - 4. Any matter for which the resolution is not under the control of the university. Examples of these might include federal and state regulations governing employment, grant operations and reporting, state statutory or rule requirements, generally accepted accounting practices, and approved fringe rates.
- C. An individual may not file grievances that are frivolous, vexatious, retaliatory, initiated in bad faith, are filed to harass or annoy the Respondent, or grievances that are clearly unreasonable. Engaging in such behavior may result in sanctions or disciplinary actions against the individual(s) who filed the grievance. This determination will be made by the HRL during their initial review. If the Respondent believes that the grievance meets the conditions described in this Paragraph C, they may ask the Grievance Hearing Panel to consider this in its findings and recommend sanctions against the Grievant. If such a request is made, the panel will include in its report to the Decision Maker a section regarding the Respondent's request (see 11.3.4. K below).

## 11.3.2 Terms

- A. "Respondent" refers to the individual or individuals whose alleged decisions, actions, or inactions have given rise to the Grievant's concerns.
- B. "Decision Maker" refers to the Provost or Vice President who is charged with making the decision.
- C. "Panel" refers to the Grievance Hearing Panel selected using the process defined in Sections 11.3.4 F, G and H of this grievance procedure.
- D. "Grievant" refers to the faculty member alleging a tangible adverse professional impact allowable under Section 11.3.1.
- E. "Presiding Panel Member" or "PPM" refers to the panel member selected by the panel to preside throughout the grievance process.

## 11.3.3 Informal Resolution

If a dispute or conflict arises, the Grievant is expected to make reasonable, good faith efforts to resolve the dispute or conflict directly and promptly with the Respondent prior to filing a grievance and beginning the Grievance Procedure (11.3.4). A Grievant should first discuss their concerns with the Respondent. If those efforts fail, the Grievant may utilize the Grievance Procedure below.

## 11.3.4 Grievance Procedure

- A. A grievance must be provided in writing to the Human Resources Leadership (HRL)<sup>1</sup>. It must be filed no later than fifteen (15) days after the grieved action, inaction, or decision became known to the Grievant. If the Grievant fails to file the grievance by this deadline, the grievance is ended.
- B. The written grievance must contain, at a minimum, a statement that identifies the issue(s) in dispute and the Respondent, describes the factual basis for the grievance and the efforts to resolve the matter, and describes with specificity the desired outcome.
- C. The HRL, who is the Chair of the Faculty Grievance Committee, will review the grievance and determine whether it is a grievable matter (Handbook Section 11.3.1) that falls within the jurisdiction of the Grievance Committee within twenty (20) days. The Chair will determine whether the grievance is compliant with the submission requirements of Handbook Section 11.3.4 B.
- D. If the grievance is deficient, the Chair will advise the Grievant in writing and may allow the Grievant to revise and resubmit the grievance. The Chair must receive the revised grievance no later than seven (7) days after the Grievant's receipt of the Chair's notice of deficiency. Failure to resubmit within this deadline ends the grievance.
- E. The decision of the Chair as to whether it is appropriate for the Committee to review the grievance is final and may not be grieved or otherwise appealed.
- F. For grievances that qualify to be reviewed, a Grievance Hearing Panel will be selected from Committee membership. The Chair will promptly conduct a random selection of the Committee members for the initial Panel.
- G. The Panel will select a Presiding Panel Member (PPM) within three (3) days of the Panel selection. Subject to Section 11.3.7 F., the PPM will schedule a pre-review conference of the Panel including the Grievant and the Respondent. The purpose of the pre-review conference is to clarify the issues, provide exchange of documents, set a date for the Panel Review, identify witnesses, and decide other preliminary matters. With consideration to participants' schedules, the pre-review conference will occur promptly, typically no later than ten (10) days after the selection of the PPM. If the pre-review conference becomes difficult to schedule, the PPM may conduct it on weekends and evenings.
- H. If the Grievant's scheduling conflicts delay a scheduled pre-review conference more than one time, the Chair, in conjunction with the PPM, can dismiss the grievance for failure to prosecute and any such decision of the Chair shall be final and not subject to appeal.
- I. At the conclusion of the pre-review conference, the Panel shall prepare and distribute to the parties a list of issues to be addressed in the Panel Review. Should the Panel have questions or require clarification of what issues are grievable under this process, the Panel can discuss their questions with the HRL and with their assigned legal counsel (Section 11.3.6.B.). The PPM shall dismiss any issues that are not subject to the grievance process pursuant to

Section 11.3.1. The list of grievable issues generated pursuant to this subparagraph shall be binding upon the subsequent Panel Review and hearing, if any.

- J. Both the Grievant and the Respondent shall submit a written position statement to the PPM and provide a copy to the opposing party within three (3) days following the pre-review conference. The position statement shall include a concise statement summarizing the case from the position of the submitting party and addressing each of the issues identified by the Panel. Witnesses may also submit their statements directly to the PPM. The Panel will consider only those statements from witnesses with direct factual knowledge of the workplace action(s) at issue in the grievance. Statements from character witnesses are not permitted as part of the grievance process.
- K. Within seven (7) days following the pre-review conference, the PPM will schedule the Panel Review. The Panel Review will be attended by only the Panel Members. The PPM will facilitate the discussion on the issues, ensuring balance across the submitted information from the Grievant and the Respondent, and their witnesses, and focusing the issues that will be brought to the grievance hearing. At the conclusion of the Panel Review, the Panel will issue its initial findings, including which issues require further review or discussion to the Grievant, and the Respondent.
- L. Within seven (7) days of the Panel Review, the PPM will schedule a grievance hearing. The hearing should normally occur no later than twenty-one (21) days after the Panel Review.
- M. Only members of the Panel, the Grievant, the Respondent, and their respective counsels or advisors may attend the pre-review conference and the grievance hearing, if any (advisors are subject to the limitations set forth in Section 11.3.6). Witnesses may be present at the grievance hearing only while giving testimony. Witnesses cannot be compelled to testify at any grievance hearing.
- N. At the hearing, only the Grievant and the Respondent will be allowed to actively present their cases. The parties will be given equal periods of time within which to present their respective cases, as determined by the PPM; however, either party may waive any portion of the time allotted to them. The Grievant bears the burden of proof.
- O. The Panel will issue its report and recommendations, including its findings, to the Grievant, the Respondent, the HRL, and to the Decision Maker. The Panel will issue its report within seven (7) days. Only in extraordinary circumstances, the panel's report submission may be delayed. If the panel requires more than seven (7) days, the PPM must contact the HRL to discuss the possible submission date. Under no circumstances should the report be issued later than fourteen (14) days after the hearing.

<sup>1</sup> If the grievance is against the HRL, it must be provided in writing to the Executive Vice President for Finance, Administration and Operations. In this event, all references that follow within this procedure to the HRL will be replaced with the Executive Vice President for Finance, Administration and Operations.

### 11.3.5 Decision

- A. Within a period of seven (7) days after receipt of the panel's report and recommendations, and the complete record, the Decision Maker will issue their decision. The Decision Maker will use the standard of preponderance of evidence in making their decision. The decision of Decision Maker shall be made based only on the record created in the Panel Review and subsequent grievance hearing, if any. No additional information from either the Grievant or Respondent will be

considered. The Decision Maker shall possess the authority to affirm, reverse, or modify the recommendation of the Panel. If the Decision Maker needs additional time to issue their decision, they will notify the parties in writing of the need for an extension.

- B. The decision of the Decision Maker is final and there is no further appeal. The decision will be provided to the Grievant and the Respondent in writing. Copies of the decision will be provided to the Faculty Grievance Committee Chair, the PPM, and to the Chair for inclusion in the Grievant's and/or Respondent's personnel file as determined by the Decision Maker.

### 11.3.6 Advisor's Role in the Grievance Process

- A. The grievance process is an internal procedure for resolving workplace disputes; it is not intended to be a formal legal proceeding. The Grievant and the Respondent may select an individual, without a conflict of interest in the matter, to act as advisor during the process. Counsel or an advisor may advise either party throughout the grievance process and is permitted to attend the pre-review conference and the grievance hearing (if any).
- B. An attorney from Mines' Office of General Counsel may advise the Panel on procedural matters related to the grievance. If that attorney is already actively involved in advising a party with regard to the grievance, another attorney from Mines' Office of General Counsel, an attorney from the State's Attorney General's Office, or external counsel may be assigned to advise the Panel. An ethical wall will be utilized to address and resolve any conflict of interest that arises from this representation. Mines' Chief General Counsel will provide advisement to the Decision Maker (except in situations where a conflict of representation may arise, in which case, alternate representation shall be arranged through the engagement of an uninterested attorney in Mines' Office of General Counsel, the Attorney General's Office, or external counsel).

### 11.3.7 General

- A. If the President is the Respondent to the grievance, the Grievant is encouraged, but not required, to first discuss their concerns with the President. If the Grievant does not wish to engage the President in a discussion of their concerns, the Grievant may submit their grievance to the Grievance Committee Chair. If the Chair determines the matter is grievable, per handbook sections 11.3.1.A through 11.3.1.C, the Chair will consult with the Chair of the Board of Trustees following the procedures set forth in 11.3.4.A through 11.3.4.E. If the Grievant elects to discuss their concerns with the President, the President will issue their decision in writing to the faculty member. A decision issued by the President may not be submitted to the Faculty Grievance Committee but may be appealed to the Chair of the Board of Trustees. Any decision by the Board of Trustees is the final decision of Mines with regard to grievances brought against the President.
- B. If a grievance is lodged against the Provost or a Vice President, the Panel report and recommendation will be provided to the President (or their designee) who will make the final decision.
- C. References in the singular include the plural where the intent of the sentence is obvious that the plural should be included and where the meaning of the sentence is not materially changed. For example, the terms "Grievant" and "Respondent" shall include "Grievants" and "Respondents" as appropriate.
- D. All references to days are made to calendar days.

- E. If any deadline falls on a weekend or holiday, it will be extended to the next business day.
- F. If the pre-review conference, the panel review, or the grievance hearing falls within the period between the end of the spring semester and the beginning of the subsequent fall semester, at the discretion of the PPM, these may be postponed until the fall semester. If a postponement is necessary, the deadline for setting the pre-review conference shall be thirty (30) days after the start of the fall semester.